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5. The net profits arising from the sale of the state bonds by the bank of Louisiana in 1824, belong exclusively to the stockholders *at the time*, in proportion to the stock held and actually paid in by them respectively. *ib.*
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BANK DIRECTORS.

1. A person who believes himself agrieved, by the refusal of the board of directors of a bank, to permit him to become a stockholder, may, whatever be the value of the property offered, resort to an action for damages; but he cannot *appeal* from such a refusal to a court of original jurisdiction..... *Walden vs. Union Bank.* 248
2. In such a case damages cannot be recovered for an honest error or mistake, but they may be for capricious or improper conduct of the board..... *ib.*
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4. The board of directors of a bank is invested with discretionary power of judging what portion of the profits it is advisable from time to divide among the stockholders. *State of Louisiana vs. Bank of Louisiana.* 745

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Clegg et als. vs. Alexander. 356

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3. An action by the acceptor against the endorser, cannot be sustained without proof, that the acceptance was made purely for the accommodation of the drawer..... *ib.*

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Brown vs. Frantum. 39

BROKER.

1. Brokers are not employed like commission merchants, to buy or sell, or like bankers to lend or borrow money, but simply to procure sales or loans. They negotiate bargains, carry communications to and from the parties respectively, and they or their agents conclude the bargains..... *Beal vs. M'Kiernan.* 407

2. To justify payment to a broker, the purchaser is bound to show either a general custom or a special authority from the vendor to receive payment..... *Toledano vs. Klingender.* 691

3. In the absence of proof of any authority in a broker to receive payment for the seller, or of any act from which such authority can be presumed, the buyer who pays must sustain the loss, in case the broker fails to pay over the money..... *ib.*

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2. Where the record contains no statement of facts, and the certificate of the clerk shows that the testimony taken in open court was not reduced to writing, the case cannot be examined on its merits in the Supreme Court,..... *Thomasson vs. Baum,* 123

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5. The clerk's certificate that the record contains a full transcript of all the pleadings, proceedings, documents, and evidence on file in the case, does not authorise the conclusion that all the evidence adduced was put on the file and is, therefore, insufficient,

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2. The citation of the appellee cannot be proved, as a matter *in pais*, it must appear as a matter of record, or at least must be established by the written acknowledgment of the party,..... *ib.*

3. Service of the citation and petition of appeal at the last domicile of the appellee, residing within the State is insufficient; it should have been at its usual residence,..... *Veuse vs. Righter* 138

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Syndic of M^r Manns vs. Jewett, 530

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13. A penal clause in a contract fixing the amount of damages in case of its non-performance by either party is reciprocal, and must be enforced on this principle; and nothing more or less than the penalty fixed can be recovered,..... *M'Gloin vs. Henderson & Johnson*, 720

14. But where a penal clause in a contract fixes the amount of damages in case of non-performance by either party, and there is a part performance by one of them, the court may modify the penalty accordingly,..... *ib.*

15. So where one party advances half the sum stipulated in the performance of a contract, which has a penal clause of one thousand dollars, in case of failure, and the other party fails to complete his part, the former cannot recover back the sum advanced and the penalty too; he can only recover the penalty,..... *ib.*

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1. The clause of the act of Congress relating to the obstruction of the passage of the mail, is of a penal character, and in its application to individuals, charged with a violation of it, must be strictly construed; and certainly not with less strictness when it is sought under its provisions to protect from the pursuit of creditors the vessels usually employed in the transportation of the mail, in derogation of a right recognised by the laws of the state..... *Parker vs. Porter et als.* 169

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2. The Court of Probates has no jurisdiction in an action against an executor for damages occasioned by an act of the defendant not legally done, in relation to the administration of the succession.

Hurst vs. Hyde's Executor. 449

CURATOR.

1. A curator ought to render his account before the court without being called on by the heirs, but his omission to do this does not deprive him of the right, when an account is provoked by the heirs, to demand credit for a sum which he is entitled to retain, although he has not claimed it in the course of his administration. *Denaule vs. Nunez.* 27

2. The settlement of an estate, administered by a curator before the Court of Probates, in which settlement the heirs were not properly represented, cannot be considered as *res judicata* against them. If made *ex parte* by the curator, it creates only *prima facie* evidence of the faithfulness of his administration, and correctness of the account rendered..... *Verret et al. vs. Aubert.* 350

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Hooke vs. Hooke et al. 472

6. It is the duty of the plaintiff to bring all the defendants before the court, by provoking the appointment of a curator *ad hoc* to those who reside out of the state.

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DEBTOR AND CREDITOR.

1. A debt as between debtor and creditor is indivisible without the consent of both..... *Kelso vs. Beaman.* 87

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Gilbert vs. His Creditors. 145

1. An opposing creditor cannot urge a claim in the Supreme Court which was not stated in his opposition in the inferior court.

Zacharie et al. vs. O'Beirne et al. 378

DEFAULT.

1. Where defendant was obligated to deliver certain articles to the plaintiff, and the latter in his letter requested the former to hasten the shipment of the articles, and this letter was on the trial produced by the defendant, held that the latter was thereby put in default.

Spurrier vs Sheldon et al. 182

DEMAND.

1. Personal demand on the debtor, previous to bringing the hypothecary action against the third possessor, will not be required where the debtor has absconded. A return by the sheriff of *nulla bona*, is sufficient.

Sprigg vs. Beaman. 59

2. The fact of the plaintiff's attorney asking the defendant for a settlement of the account between them, is evidence of an amicable demand on the latter.....*Hough, curator, &c. vs. Richards.* 675

3. When it appears there was no allegation or proof of an amicable demand before the inception of the suit, the defendant may, on asking it in his answer to the appeal be allowed his costs in both courts.

Brunei vs. Millaudon. 713

4. Making diligent inquiry for the maker of a note and to find his domicile, but without effect, in order to make demand of payment, will excuse the want of a formal demand.....*Franklin vs. Verbois et als.* 727

5. The act of March 1827, has not introduced any new rule as to the demand necessary to be made on makers of notes or acceptors, or drawers of bills. What will constitute a legal demand of payment so as to bind endorsers must depend on the commercial law..... *ib.*

DEPOSIT.

1. The obligation of a depositary to a third person who is the owner of the thing deposited, can be produced only by the service of legal process.....*Oneto vs. Delaunay et al.* 32

2. The responsibility of the depositary extends to third persons when the thing deposited does not belong to the depositor..... *ib.*

DONATION.

1. If the donor alone appear before the notary and sign the act of donation, it is not null for want of form...*Duplessis vs. Kennedy et als.* 231

2. The words "must accept" in the 1533d article of the *Louisiana Code*, are not prohibitory so as to import a nullity if contravened, nor

is the pain of nullity expressly declared..... 231

3. Any form of expression, which shows that the parties understood each other as to the thing given, and the conditions and charges annexed to the donation, is sufficient..... *ib.*

4. A minor above the age of puberty, may even without the concurrence of a curator, better his condition by accepting a donation..... *ib.*

5. If while the donor stipulates a return to himself, he stipulates it in favor of another at the same time, and yet not in terms importing essentially a substitution, the stipulation of return to himself may subsist, and that part only be declared null, which contravenes the prohibition of the Code..... *ib.*

ENDORSERS.

1. A receipt for a promissory note, given by the endorsee to the endorser, stating that on payment of the note the endorser is to retain a specified sum and to pay the balance to the endorser, does not change the obligation of the endorser, though it is evidence that on payment of the note the endorsee is liable to the endorser for that balance.

M^r Carty vs. Montet. 20

2. In an action against the drawer and endorser of a promissory note, although the drawer may plead the respite granted him in bar to the suit, this plea has no effect on the liability of the endorser.

Picquet vs. Dimitry. 120

3. The endorsers of notes given to the corporation of New-Orleans, in pursuance of an express agreement, to secure the payment of a deficit discovered to be due by the city treasurer, for whom the endorsers are already sureties for the faithful administration of his office as treasurer, cannot discharge themselves on the ground that said notes were executed in error, because it is alleged they were not bound under their surety bond..... *Mayor et als. vs. Blache et als.* 500

4. Considered as mere endorsers, there is nothing showing why the defendants endorsed the notes in question, and as between the holders and endorsers a plea that they endorsed without consideration would not avail them..... *ib.*

5. The act of March 1827, has not introduced any new rule as to the demand necessary to be made on makers of notes or acceptors, or drawers of bills. What will constitute a legal demand of payment so as to bind endorsers must depend on the commercial law.

Franklin vs. Verbois et als. 728

6. Notice of protest for non-payment by the drawers given to the endorsers by leaving it at their dwelling houses is sufficient..... *ib.*

7. Where the defendant pleads a general denial, and that he was not

party to a suit by which the endorser was released for want of notice, he cannot offer evidence to show the endorser has been secured against his endorsement.....*Miranda vs. City Bank of New-Orleans.* 740

8. It is not to be presumed that the endorser intended to make himself unconditionally liable and waive a demand on the drawer, and protest and notice to himself, because he attended a meeting of the creditors of the drawer, to be secured against his endorsement..... *ib.*

ERROR.

1. In an assignment of errors apparent on the face of the record, nothing can avail the appellant which could have been cured by evidence legally introduced in the inferior court.

Miller vs. Whittier et al. 70

2. While the appellant is by the judgment condemned to pay the exact sum he owes, he cannot assign as error that the plaintiff has also judgment against another person for an equal or less sum..... *ib.*

3. If the appellant, relying on error apparent on the face of the record, fail to assign the order on which he relies within ten days from the filing of the transcript, he cannot do it afterwards, and the appeal will be dismissed.....*Bowman vs. Jones et al.* 143

4. If the appellant rely on errors, apparent on the face of the record, and fail to make the assignment within the ten days next following that of filing the transcript of the record, the appeal will be dismissed.....*Moore vs. Gibson.* 155

5. Clerical errors when they appear merely as such in entering orders, &c. ought not to be allowed to affect the rights of the parties, and should be disregarded.....*Elkins vs. Zacharie.* 646

EVICTION.

1. The same judgment which has been rendered against the possessor of property, for rents accruing after judgment of eviction from the premises will be rendered against his vendor.....*Elliot et al. vs. Labarre.* 166

2. The article 2535 of the *Louisiana Code*, which authorises the buyer who is disquieted or has reason to fear eviction, to withhold the price until security is given, applies to a buyer in possession who has accepted the sale, and not to one who discovers these defects before he accepts a deed from the seller.....*Pontchartrain Rail Road Company vs. Durel.* 481

3. The purchaser of property at sheriffs or marshals sales is entitled to the sum which he really paid and which must be reimbursed in case of eviction, the consideration having thereby absolutely failed.

Lambeth vs. The Mayor et als. 731

4. Where a purchaser at a marshal's sale is afterwards evicted on the ground that the property was not legally sold, the only injury he sustains is the amount which he paid for the property..... *ib.*

5. Seizing creditors of property sold under execution are responsible to the purchaser no further than for the re-imbursement of the purchase money..... *ib.*

EVIDENCE.

1. When two parties are applicants for the purchase of a tract of land from the United States, and the Register permits one of them to purchase, his title under such a permission will not be disturbed, although the evidence does not satisfactorily prove the decision between them to have been made by a comparison of the proof of their respective pretensions.

Primot vs. Thibodaux, 10

2. Where a suit was brought on a bill of exchange, and the defendant and drawer was not charged in the petition, upon his promise to pay after presentment of the bill to and refusal of payment by the drawee; and where eighteen months before the trial, the defendant was apprised that he would be charged on that ground, by a deposition which was taken: held that evidence of such promise was admissible, although objected to on the trial..... *Ives vs. Eastin,* 13

3. A judgment record is admissible in evidence to prove a judgment against the defendant, rendered in another state, on which judgment the suit is instituted; although the plaintiff knows the existence of another record, showing the defendant to have taken the benefit of the insolvent laws of that state and that the plaintiff was one of his assignees.

McIntyre vs. Whiting, 35

4. Testimonial evidence to prove the age of a person is admissible, unless it is first shown that there exists a record of births, or other written evidence..... *Duplessis vs. Kennedy et als.* 231

5. Parol testimony is admissible in contradiction to a written instrument, to prove facts which are merely inductive to the main facts required to be proved..... *Badon vs. Badon,* 255

6. The discontinuance of a suit is not conclusive evidence of a want of a cause of action, and that a sequestration was wrongfully sued out, particularly as relates to the surety in the bond. In a suit on the bond after a discontinuance, evidence may be given, that some cause of action existed at least in mitigation of damages..... *Stetson et al vs. Le Blanc et al.* 266

7. In an action for work and labor performed under a contract, the plaintiff reciting in his petition an order or draft, not negotiable, drawn in his favor by the defendant on a third person, and the defendant denying due diligence in the presentation of the draft, and claiming a discharge on that ground: held that the draft was not to be considered as a com-

mercial bill of exchange, but was merely an indication of a settlement between the parties, showing the amount really due on the contract, and for this purpose it was admissible in evidence... *Benson et al. vs. Allison.* 364

8. In sums over five hundred dollars, the testimony of one witness is in sufficient to confirm a judgment by default..... *Hagan vs. Ferres.* 325

9. A receipt given by the widow to a purchaser of property held in community between her and her children, is admissible in evidence to show payment of the price, against the latter in a suit to recover back the property as having been illegally sold..... *Huset's Heirs vs. Lefebvre.* 601

10. The sheriff's deed and return upon the execution are *prima facie* evidence of title in the purchaser at sheriff's sale; and he who seeks to annul such an alienation must show that the formalities required by law were not complied with..... *Grant and Olden vs. Walden.* 623

11. The bill of lading is only *prima facie* evidence that the goods and merchandise mentioned in it were shipped in good order.

12. Other evidence will be received to show that the articles mentioned in a bill of lading as being shipped in good order, were damaged before shipment..... *Kimball and Lilly vs. Brander et als.* 711

EXCEPTIONS.

1. Where bills of exception have been taken by both parties, and where all the evidence objected to might have been admitted without materially changing the facts; the Supreme Court will not examine the correctness of the decision of the judge *a quo* upon any of the bills of exception..... *Robinson et al. vs. Taylor et als.* 393

2. Payment is a peremptory exception going to extinguish the action and must be pleaded..... *Gleisses vs. Faurie et al.* 455

3. A bill of exception to the rejection of depositions which are not before the Supreme Court, not specifying the grounds upon which they were rejected, is too vague to be examined in this court.

Holmes vs. Holmes. 463

4. It is too late to present a bill of exception to be signed by the judge after judgment is rendered, although the objection to the decision be made on the trial..... *Peytavin vs. Winter.* 553

5. The objection that illegal testimony was admitted on the trial cannot be made the ground for a new trial when no bill of exception was taken to its admission or opposition thereto..... *ib.*

6. Where no bill of exception is taken or objection made to the admission of evidence on the trial, it is too late to object to it on appeal,

Hough, curator vs. Richards. 675

EXECUTION.

1. The sheriff's deed and return upon the execution are *prima facie* evidence of title in the purchaser at sheriff's sale; and he who seeks to annul such an alienation must show that the formalities required by law were not complied with..... *Grant and Olden vs. Walden.* 623

2. The same *delays and formalities* must be observed in executing writs of *seizure and sale* against mortgaged property, as are required when property is seized under a writ of *fiery facias*,..... *ib.*

3. So in a sale of immovable property under a writ of *seizure and sale* issuing on a judgment against third possessors of mortgaged property, *three days* notice is required to be given, *after seizure*, and before advertising; otherwise the sale is void and transfers no right in the property to the purchaser..... *ib.*

EXECUTOR.

1. Where seisin is given by the will to the executor, he is authorised to bring an action to recover the possession of any property which may have belonged to the testator at his death.

The executors of Hart vs. Boni f. w. c. 97

2. This right of the executor exists, and the action does not abate where the possessor asserts title in himself, the validity of which title can only be ascertained by trial *ib.*

3. In a suit by the executor to recover the deceased's property, the heirs if interested and present, or if absent, then their representatives, should be made parties to the action..... *ib.*

4. Where three executors were appointed with joint and several powers in relation to the settlement and liquidation, and when that should be effected, they were to account to and place the funds of the estate in the possession of one of their number; held that to carry into effect the intentions of the testator thus expressed, a sale of the property was indispensable..... *Executors of Hart vs. Schmidt, attorney, &c.* 167

5. The 1172d article of the *Louisiana Code*, does not apply to the case of an executor who seeks to distribute the net proceeds of an estate among the heirs. In that case the persons concerned are not to be cited in the manner prescribed in that article, which is restricted to cases in which nothing is sought but the sanction of the Court of Probates to the payment of creditors..... *Millaudon vs. Cajus.* 222

6. The case of an executor called to account by the heirs, has no bearing on that of an executor who seeks to distribute the net proceeds of an estate among the heirs..... *ib.*

7. The presence of a party at and his subscribing the inventory, cannot authorise the executor to consider him as constantly in court and bound

to take notice of any account which the executor may subsequently file, so as to be precluded from contesting any part of it, unless a written opposition be filed within three days..... *ib.*

8. Where the functions of two executors are equal and undivided, each can claim one half only of the commission. *Mon et al. vs. Garnier.* 324

9. The legacy left to a co-executor, is evidence of the testator to remunerate this co-executor for his trouble, by the legacy, instead of the half of the commission he would otherwise have been entitled to..... *ib.*

10. The sale by the executor, of property bequeathed as a specific legacy, is wholly irregular and void,

Psyche vs. Paradol et al. Durel appellant. 366

11. A note found among the papers of a factor at his decease, which had been taken in payment of the price of property sold for his consignor, belongs to the latter, and should be delivered up by the executors, or its proceeds if collected, without being mingled with the estate of the deceased..... *L'Hommedieu vs. Penny's Executors.* 599

12. Executors residing in another state, or representing a testator whose will was opened there, cannot intervene in a suit pending in this state until they cause the will to be made executory here.

Lincoln Fearing & Co. vs. Executors of Russell Ball. 685

FREIGHT AND PASSAGE MONEY.

1. When passengers in a vessel are conveyed to a different port without their consent than that agreed on at the time of sailing, no recovery can be had for the amount of their passage money.

M'Gloin vs. Henderson and Johnson 715

2. So where the owners of a schooner stipulate to deliver passengers at a particular place for a certain sum, in the penalty of one thousand dollars, and fail without the fault of the other party the penalty is thereby forfeited and will be recovered..... *ib.*

HABEAS CORPUS.

1. On an application for the writ of *habeas corpus*, the decision of the judge upon matters of a criminal or political nature, is not examinable in the Supreme Court..... *Hyde et al. vs. Jenkins.* 427

2. The writ of *habeas corpus* may be issued in civil as well as in criminal and political cases..... *ib.*

HEIRS.

1. The settlement of an estate, administered by a curator before the Court of Probates in which settlement the heirs were not properly represented, cannot be considered as *res judicata* against them. If made ex

parte by the curator, it creates only *prima facie* evidence of the faithfulness of his administration, and correctness of the account rendered.

Verret et al. vs. Aubert. 350

2. Where it is proved that certain persons, who claim an estate, are the legal heirs of its deceased proprietor, they will be considered his only heirs, unless it is shown that others exist..... *Celis et al. vs. Oriol.* 403

3. Where a register of baptism proves that a child was christened by the name of Francisco Antonio," and a register of burials attests the interment of a person named "Francisco," and no question as to the identity was raised in the inferior court: *It was held* that the person whose death was attempted to be proved, must be considered the one whose death, according to the pleadings, it was important to establish..... *ib.*

4. The article 944 of the *Louisiana Code*, establishes the principle, that the capacity of heirs to inherit depends on the law in force at the time the succession is opened..... *Lange et als. vs. Richoux et als.* 560

5. While a person continues a *statu liber* he is capable of receiving by donation or testament but not by inheritance..... *ib.*

6. The attorney of the absent heirs is the proper person to represent them in all cases where they are interested, even after the executor or curator of the estate is discharged..... *Dupré vs. Reggio, tutrix, &c.* 653

7. The attorney of absent heirs does not become *functus officio* by the discharge of the testamentary executor..... *ib.*

HUSBAND AND WIFE.

1. Where a wife sells land belonging to her paraphernal estate, and in the notarial act of sale, acknowledges the receipt of the money, she cannot afterwards deny that she received it, although she may waive the *actual* receipt..... *Foster vs. Her Husband* 22

2. In such a sale the wife may show that in pursuance of an agreement between herself and her husband, the money was actually paid to her husband, or actually passed through his hands in consequence of a transfer of the land by her vendee, and a subsequent sale..... *ib.*

3. The wife, although separated in bed and board from her husband, cannot, without his consent, give a power of attorney to alienate her real estate; though, without his consent, she may give such power in regard to her personal property..... *Harrison vs. Faulk.* 80

4. The wife cannot oppose the homologation of the proceedings of her husband as an insolvent debtor, unless she is authorised by him, or by the judge on his refusal..... *Tourné vs. His Creditors.* 459

5. The wife cannot vote in the deliberations of creditors, unless her rights have been settled by partition or a judgment..... *ib.*

6. The wife has no action against the husband for property of the community sold by him, before the institution of a suit for separation.. *ib.*

7. A suit instituted against the husband and wife, to compel the latter to renounce all liens and tacit mortgages she may have on certain property in the plaintiff's possession, held under titles derived from her husband, is *sui generis*, novel and not tolerated by law and will be dismissed..... *Miller vs. Foucher and Wife.* 638

8. The surviving husband, not separated in bed and board inherits the estate of his deceased wife, who *died without* leaving descendants, ascendants or collateral relations duly acknowledged, in preference to her natural brother..... *Victor vs. Tagiasco's Executor.* 642

9. The surviving wife is called to the inheritance and preferred to all the natural relations of the husband, and he to all her natural relations except those of the descending line..... *ib.*

INHERITANCE.

1. The article 944 of the *Louisiana Code*, establishes the principle that the capacity of heirs to inherit depends on the law in force at the time the succession is opened..... *Lange et als. vs. Richoux et als.* 560

2. While a person continues a *statu liber*, he is capable of receiving by donation or testament but not by inheritance..... *ib.*

3. The surviving wife is called to the inheritance and preferred to all the natural relations of the husband, and he to all her natural relations except those of the descending line..... *Victor vs. Tagiasco's Executor* 642

INJUNCTION.

1. Where the plaintiff by an order of the Parish Court of the parish and city of New-Orleans, had enjoined the payment of the proceeds of a steam boat, sold by order of the City Court, without making those persons parties, who were interested in opposing the plaintiff's claim: *held* such an injunction was properly dissolved on the intervention of one of the judgment creditors in the City Court.

Robertson vs. Bosque et al. 306

2. Damages will not be given where the appellant can be supposed to have entertained an honest doubt..... *ib.*

INSOLVENT.

1. An insolvent cannot oppose the distribution among his creditors of any sum of money in the syndic's hands, on account of irregularities in the sale of the surrendered property, of over-charge by the syndic, or his omission to charge himself with what he is legally chargeable.

Arcenauz vs. His Creditors. 6

2. If the sale of the insolvent's property has been illegally conducted by the syndic, it can be set aside only by the proper action between the proper parties; and the homologation of the tableau of distribution cannot preclude the insolvent, or affect any right to which the illegality might give rise..... *ib.*

3. Every conveyance of property is null and void, which the creditor takes from his debtor, knowing him to be in insolvent circumstances, and by which the debt is secured and an advantage gained over other creditors..... *Ingham et als. vs. Thomas.* 82

4. A conveyance of property is null when made to a third person by the insolvent's vendor, in consequence of a payment theretofore made by the insolvent to the vendor. The syndic alone is entitled to recover the property which the insolvent has conveyed in fraud of the rights of his creditors..... *ib.*

5. All dealings between persons are presumed to be in good faith which take place while neither of the parties is in failing circumstances.
Gilbert vs. His Creditors. 145

6. Insolvency is never presumed.

Blanchard et al vs. State of Louisiana. 290

7. Where the insolvent and another person were both retail grocers, and the articles were received in small quantities from the insolvent, and such as grocers are in the habit of interchanging for the accommodation of their customers: *held*, that such transactions in the usual course of business, are not liable to be annulled as fraudulent under the insolvent law..... *Robbins, Syndic, &c. vs. Leverich et al.* 340

8. A transfer is fraudulent, made by an insolvent one week before his surrender of debts due him, so as to secure or novate a debt of the insolvent to the transferee..... *ib.*

9. A sale made to one *not a creditor*, by an insolvent or absconding debtor, even within the three months preceding his failure, is not presumed to be fraudulent; and in an action to annul it, the burthen of proof is on the party attacking the contract.

Syndic of M^r Manus vs. Jewett. 530

10. A partnership claim put on the bilan is not notice to an individual partner whose claim is omitted, and he is not a party to, or bound by the proceedings..... *Thomas et als. vs. Breedlove et als.* 573

11. A creditor who is not put on the bilan for his individual claim and cited to attend the *concurso* of creditors, is not bound by their proceedings, even if he is placed on the tableau of distribution, but declines receiving dividends..... *ib.*

12. The proceedings of a debtor against his creditors are *res inter alios acta* as to any one who is not on the bilan, and whose claim is not mentioned therein..... *ib.*

INSURANCE.

1. This case presents a question of fact, only.

Guillaume vs. The Louisiana Insurance Company. 117

2. To *ship goods at a place*, means to put them on board of a vessel at the place designated, but to *ship goods from a place* does not necessarily imply that they should be laden at the place from which they are to be shipped. The word *ship* may signify either the putting on board of a vessel, or the carrying merchandise on a voyage between two *termini*.

Sorbe et al. vs. Merchant's Insurance Company. 155

3. In a policy of insurance of certain merchandise to be shipped from a given place within a specified period, the material circumstance which ought to weigh most, is the time of the sailing of the vessel on which the property is laden; and this could take place so as to bind the insurer at any time within the specified period..... *ib.*

INTEREST.

1. The *Code of Practice* fixes the period when interest commences by the death of a debtor, but indicates no period when it ceases; the interest must, therefore, be considered as a legal accessory, accompanying and supported by the principal until payment.....*Andrews vs. Withers' Heirs.* 360

2. Interest will be allowed on protested notes, and on those given for the price of slaves purchased, from the time they are due and payable.

Franklin vs. Verbois et als. 727

3. The law does not authorise interest to be allowed on the share of profits belonging to a portion of the stockholders, which is retained among the funds of the bank for a series of years.

State of Louisiana vs. Bank of Louisiana. 745

4. In an action against the administrator of a succession founded on a claim for the interest stipulated in the intestate's obligation, legal interest will be added, as upon other claims against the estate.

Mudd vs Stille's heirs. 17

5. A real tender cannot be made so as to stop interest, unless the legal formalities are pursued: thus a tender to the plaintiff's attorney at law, is insufficient..... *ib.*

INTERVENTION.

1. A petition of intervention in a suit, will not be admitted after the trial of the cause has commenced.

Lincoln Fearing & Co. vs. Executors of Russell Ball. 685

2. Executors residing in another state, or representing a testator whose will was opened there, cannot intervene in a suit pending in this state, until they cause the will to be made executory here..... *ib.*

JUDGES.

1. The act of 1824, relating to the trial of causes in which the judges are recused, impliedly repeals the thirtieth section of the act of 1813, which directed the transfer of a cause which the district judge was incapacitated to try, to the court of a neighboring district.

Jarreau vs. Choppin et al. 130

2. The first section of the act of 1824, in which the legislature order certain causes to be tried by the parish judge, repeals the first section of the act of 1822, amending the several acts to organise the courts..... *ib.*

3. Where a parish judge is legally called on to try a cause in the district court, he is a district judge *ad hoc*, and exercises the powers of a district court..... *ib.*

JUDGMENT.

1. No amendment by the judge *a quo*, of a judgment, can be made after the judgment has been signed; nor before, except for the causes enumerated in the 547th article of the *Code of Practice*.

Flint, Syndic, &c. vs. Cuny et al. 67

2. When the judge *a quo* amends a final judgment, after signing it, and appeal be taken from that amended judgment, the Supreme Court is not authorised to examine the first judgment..... *ib.*

3. In such a case, the effect of such a judgment is suspended, and does not resume its legal character till after the reversal of the second judgment. *ib.*

4. If the correctness of a judgment be questioned, and the Supreme Court are not furnished with the evidence on which it was rendered, it will be presumed to have been rendered on evidence which authorised it.

Miller vs. Whittier et al. 70

5. A judgment of the inferior court cannot be altered against a party who is not before the Supreme Court..... *ib.*

6. Where a judgment is taken by default, and afterwards confirmed, the right of mortgage grows out of the final judgment, and does not revert to the date of the judgment by default..... *Ingham et als. vs. Thomas.* 82

7. Although a party is precluded from attacking a judgment on the ground of fraud or nullity, after the lapse of one year, yet where the petition sets up payments and matters arising since the judgment complained of, they will be inquired into..... *Stafford vs. Smith* 91

8. The same judgment which has been rendered against the possessor of property, for rents accruing after judgment of eviction from the premises, will be rendered against his vendor.

Executors of Hart vs. Schmidt, Attorney, &c. 166

9. The validity of a judgment, not reversed or appealed from, cannot be collaterally examined by either of the parties.

Psyche vs. Paradol et al. Durel, Appellant. 366

10. In sums over five hundred dollars, the testimony of one witness is insufficient to confirm a judgment by default..... *Hagan vs. Ferres*. 525
11. In such cases there will be judgment of non-suit for the defendant. *ib.*
12. Where in an action of trespass the jury pronounces on the plaintiff's title, this part of the verdict may be disregarded and judgment rendered on the claim for damages..... *Peytavin vs. Winter*. 553
13. The correctness of the judgment of the Court of Probates cannot be questioned in the District Court..... *Dupré vs. Reggio, tutrix, &c.* 653
14. If an absolute judgment be rendered when the petition prays only for a conditional one, it is good ground for reversal.. *Sprigg vs. Beaman*. 59

JURISDICTION.

1. A court of ordinary jurisdiction, is the proper tribunal in which to enforce the payment of debts due to a succession.
Grub's Heirs vs. Henderson. 51
2. The lessor has a right, under the acts of March 3d 1819, to sue for the recovery of the possession of his leased property, under the jurisdiction of a justice of the peace..... *Richardson vs. Scott & Hook* 54
3. And if judgment is obtained, and possession in pursuance of it, the inquiry will not be allowed, whether or not the proper formalities were complied with in obtaining judgment, if the justice had jurisdiction *ratione materie*..... *ib.*
4. The Supreme Court can entertain jurisdiction of a cause only where the matter in dispute exceeds three hundred dollars
Hagler vs. Pargoud et al. 86
5. The act of 1825, giving the District Court jurisdiction of *all* suits for the partition or sale of any property lying within its limits, does not deprive the Court of Probates of its jurisdiction, in a case where the property to be divided is owned by co-heirs, some of whom are minors residing out of the state..... *Hooke vs. Hooke et als.* 420
6. In a controversy between two persons making claim to an office, when it is shown that it is worth more than three hundred dollars a year, the Supreme Court has appellate jurisdiction of the case.
Hubert vs. Anvray. 595

JURY.

1. The jury are not bound by the opinion of the Supreme Court in estimating the *quantum* of damages in a case..... *Peytavin vs. Winter*. 553
2. The Supreme Court will not interfere in a point of fact on which a country jury are presumed to be better judges..... *ib.*

JUSTICE OF THE PEACE.

1. The proceedings before a justice of the peace to oust a possessor of the contested premises, is evidence in a possessory action to regain possession, *i. e.* to establish *rem ipsam*..... *Richardson vs. Scott et al.* 54
2. The lessor has a right under the acts of March 3d 1819, to sue for the recovery of the possession of his leased property, under the jurisdiction of a justice of the peace *ib.*

LAW.

1. The general repealing law of 1828, applies only to the Roman Civil Law, and the Spanish laws in force in the country at the time of the passage of that act, leaving the provisions of our own legislative acts still in force..... *Lewis' Executor vs. Casnace* 437.
2. An exception in the repealing clause of that act in favor of a particular chapter of the old *Civil Code*, shows clearly the intention of the legislature to repeal all other parts of it..... *ib.*

LEASE.

1. The lessor has a right, under the acts of March 3d 1819, to sue for the recovery of the possession of his leased property, under the jurisdiction of a justice of the peace..... *Richardson vs. Scott et al.* 54
2. Where a tenant, on being required to surrender his lease, to evade his landlord, put another in possession, such an act is directly *in fraudem legis*, and the possessor is considered as without any right or claim to the possession..... *ib.*
3. If the lessee by express stipulation in the contract of lease, be prohibited from transferring the lease to a third person without the lessor's written consent, this restriction does not apply in case of the assignment by the lessee's executor, and the executor may transfer the lease even against the lessor's will *Barron vs. Duncan, executor et al.* 100

LEGACY.

1. Where the heirs of a testator require a title in that quality to property in consequence of a right existing in their ancestor at the time of his death, and which right he had made the subject of a legacy, the title so acquired accrues to the benefit of the legatee..... *Brown vs. Frantum* 39
2. Where the husband died worth five thousand dollars, having bequeathed to his widow a slave and child, and the heirs having abandoned to her the household furniture: held she was entitled to the marital portion..... *Malancon's Widow vs. His executors et als.* 105
3. An universal legacy bequeathed to the concubine of the testator, cannot exceed in amount the one tenth part of the movables and immovables of the estate of the testator..... *Lancery vs. Kline.* 380

4. The sale of property bequeathed made by a universal legatee, is liable to be attacked, though the sale was in good faith, if a reduction of the legacy be afterwards decreed..... *ib.*

MANDAMUS.

1. If a person claiming the right to hold an office under the corporation of New-Orleans, applies to the mayor for his commission and it is refused, his remedy is by writ of *mandamus*..... *Hubert vs. Aubray*, 595

MANDATE.

1. A mandatary under a special power must confine himself strictly within the limits assigned to him, and those dealing with him must at their peril see that he does not exceed his authority; but they need not in search of his powers and their limitations, look beyond the instrument of mandate..... *Brown vs. Frantum*, 39

MARITAL PORTION.

1. When the husband died worth five thousand dollars, having bequeathed to his widow a slave and child, and the heirs having abandoned to her the household furniture: held she was entitled to the marital portion..... *Melançon's Widow vs. His Executors et als* 105
2. legacy made by the husband to his wife, must be deducted from the amount of the marital portion, to which she may be entitled..... *ib.*

MARRIAGE.

1. Marriage is regarded in no other light than a civil contract highly favored,..... *Holmes vs. Holmes*. 462
2. The *Louisiana Code* does not declare null a marriage not preceded by a license, and not evidenced by an act signed by a certain number of witnesses and the parties; nor does it make such an act exclusive evidence of a marriage. These laws relating to forms and ceremonies, are directory to those alone who are authorised to celebrate marriages..... *ib.*
3. Marriage may be proved by any species of evidence not prohibited by law, which does not presuppose a higher species of evidence in the power of the party. Cohabitation as man and wife furnishes presumptive evidence of a preceding marriage..... *ib.*

MARSHALS—See *Sheriffs*.

MINORS

1. During the lifetime of both father and mother tutorship is unknown to the law. Minor children are then subjected exclusively to the authority of the father, who administers the property of his minor children as usufructuary, and is bound to protect them in their persons and rights. The courts of justice cannot deprive the father of any part of his authority at the suggestion of creditors, under the pretext of guarding the interests of the children.

State of Louisiana vs. The Judge of the Parish of Orleans. 363

2. The appointment of a tutor *ad hoc* presupposes that the minor is unprovided with a tutor..... *ib.*
3. Neither the old *Civil Code*, nor the 11th law of the 2d title of the 3d Partida, authorised the appointment of a curator *ad hoc*, to represent a minor under the age of puberty. *Psyche vs. Paradol et als. Durel appellant.* 366
4. If minors after coming of age, either expressly or tacitly approve of the alienation of their property while under age, they cannot sue for its recovery..... *Huset's Heirs vs. Lefebvre et als.* 601

MORTGAGES.

1. The article 3323 of the *Louisiana Code*, implies that the mortgages valid against the creditors may be given if they be executed at a time when the debtor is not in failing circumstances. *Gilbert vs. His Creditors.* 514
2. A mortgage given and inscribed at any time previous to the three month's immediately preceding the failure of a debtor, will not be presumed fraudulent..... *ib.*
3. Where the record does not show by evidence the length of time which elapsed between the inscription of a mortgage and the failure of the mortgagor, it must be viewed as having been made at a period not suspicious. *ib.*
4. Where a mortgage is reserved upon the undivided moiety of a certain tract of land, a subsequent partition does not alter the nature and effects of the contract of mortgage..... *Ervin et als. vs. Orillion.* 205
5. If a mortgage exists on property in the hands of a third possessor, the property can be legally sold under it only by pursuing the hypothecary action..... *Joyce vs. Poydras De La Lande.* 277
6. The sale of property by order of the Court of Probates, extinguishes all mortgages by the deceased..... *ib.*
7. A mortgage on one third of a certain steam boat was given in Kentucky to secure the mortgagee, residing in this state, for advances made and to be made here for the mortgagor; the mortgage was forwarded to the mortgagee, to whom the boat was consigned, and in whose possession she was when attached. *It was held* that this was an inchoate mortgage, to take effect only on the acceptance of the mortgagee, that it is to be governed by the laws of this state, and that not having been duly recorded here, it cannot have effect against the creditors of the mortgagor. *Zacharie et als. vs. O'Beirne et al.* 396
8. Subsequent mortgagees can successfully make many objections to the extinguishment of their mortgages, or the release of them by the sheriff, when a sale at the instance of the first mortgagee leaves nothing for them..... *Gasquet et al. vs. Dimitry.* 453
9. A prior mortgagee who requires the court to order the sheriff to re-

lease the subsequent mortgages, cannot be heard, unless he has made them parties, or given them notice..... *ib.*

NATURAL CHILDREN.

1. So proof of co-habitation with the mother as sole concubine is tantamount to an acknowledgment of paternity.. *Lange et als. vs. Richoux et als.* 560

2. The 221st article of the *Louisiana Code*, provides that the acknowledgment of an illegitimate child by the father shall be made before a notary and two witnesses, when not made in the registry of birth or baptism..... *ib.*

3. But illegitimate children not legally acknowledged, may be allowed to prove the paternal descent if they are free and white..... *ib.*

4. In regard to the mother, illegitimate children of every description, may make proof of their maternal descent, if she is not a married woman. *ib.*

5. According to the Spanish law in force in this state before the adoption of the *Civil Code* in 1808, proof of birth was equivalent to the acknowledgment on the part of the mother, of natural children,..... *ib.*

NOTICE.

1. A duly recorded sale of a tract of land, by a description, applicable only to another tract, conveys *per se* no notice to a subsequent *bona fide* purchaser,..... *Robeson vs. Roberts.* 1

2. Although between the parties, the error in such a sale might be corrected, it can be regarded with respect to third persons, in no other light than a sale of other property,..... *ib.*

3. The 5th section of the act creating the office of register of conveyances, requiring all acts of transfer of immoveable property and slaves, whether passed before a notary or otherwise, to be registered, or to have no effect against third persons but from the day of registry, does not apply to purchasers *without notice*; and operates in favor of such creditors of the vendor as have a *recorded* judgment. or an attachment *levied* before registry,..... *Syndic of McManus vs. Jewett.* 530

4. The registry of an act of sale in the office of the register of conveyances, before any proceedings are had against the purchaser, or notice to him of the claims of the creditors of the vendor, renders the sale valid, although not made until after a sequestration issues against the property,..... *ib.*

5. Where public notice was given of the dissolution of a partnership and the endorsement of the name of the firm appeared to be made afterwards on the note in suit which was purchased through the agency of a broker: *held* that the presumption of notice to the plaintiff is in favor of the defendant, and that the former was bound to *show* that he came within the exception, by being a customer entitled to particular notice.

Nott & Co. vs. Douming et als. 680

6. Public notice of the dissolution of a partnership is good as to strangers, but not in relation to customers, or others previously dealing with the firm; *they* are entitled to particular notice..... *ib.*

7. Before notice of the dissolution of a partnership to the holder of the partnership endorsement, notice of protest to a member of the firm, is notice to all the partners..... *Nott & Co. vs. Douming et als.* 684

8. The endorsement of a note which is negotiated is equivalent to drawing a new bill; and when the endorsement is made in the name of the firm, until notification of its dissolution to the holder of the note, he has a right to regard the firm as still in existence, as to the demand and notice of protest..... *ib.*

9. Notice of protest for non-payment by the drawer given to the endorsers, by leaving it at their dwelling houses, is sufficient.

Franklin vs. Verbois et als. 727

10. A bank or other agent, undertaking to collect a note or bill endorsed is bound to use the same diligence, in giving notice of protest and demand of payment of the drawer to the endorser as the holder, and is liable to the holder on failure..... *Miranda vs. City Bank of New-Orleans.* 740

11. The bank is responsible for the acts of the notary, in not giving due notice of protest to the endorser; and the *onus* rests upon it as agent, to show that no damage resulted from such neglect, in order to be relieved from its liability..... *ib.*

12. Where a bank or agent receives a note or bill for collection, and fails to give notice, and on suit being brought against the endorser, he is exonerated for want of notice of protest, the bank cannot excuse itself on the ground that it was not made a party to the suit, unless it can show that sufficient legal notice was given to the endorser..... *ib.*

13. Notice to an endorser residing in New-Orleans, put in the post-office, without showing the notary was ignorant of his domicil, or used due diligence to find it, is insufficient to bind the endorser..... *ib.*

OFFICE.

1. In a controversy between two persons making claim to an office, when it is shown that it is worth more than three hundred dollars a year, the Supreme Court has appellate jurisdiction of the case.

Hubert vs. Auvray. 595

2. A writ of *quo warranto* is not the remedy to procure a commission from the mayor, which is withheld..... *ib.*

3. If a person claiming the right to hold an office under the corporation of New-Orleans, applies to the mayor for his commission and it is refused his remedy is by writ of *mandamus*..... *ib.*

ONUS PROBANDI.

1. A sale made to one *not a creditor* by an insolvent or absconding debtor, even within the three months preceding his failure, is not presumed to be fraudulent, and in an action to annul it, the burthen of proof is on the party attacking the contract.

OPPOSITION.

The word "opposition" in the *Louisiana Code*, art. 2926, refers only to opposition through and by the authority of a court.

Oneto vs. Delauny et al. 32

PARAPHERNAL PROPERTY.

If the sale of paraphernal property be made on a credit, the wife's right of mortgage attaches only from the date of the receipt of the money and for the amount received..... *Foster vs. Her Husband.* 22

PARTIES.

1. A will cannot be annulled, or its validity inquired into, without making those having an interest arising under it, parties to the suit.

Grubb's Heirs vs. Henderson. 51

2. In a suit between the heirs of an estate and the executor, the court cannot decree certain notes, found in the succession, but payable to the testator's natural children, to be the property of the plaintiff, without making the payees of the notes parties to the suit..... *ib.*

PARTITION.

1. Owners of undivided parts of an estate, have at all times the right of requiring a partition, and no exception exists in regard to minors.

Hooke vs. Hooke et al. 472

2. Proceedings in suits for partition, are now conducted according to the rules prescribed by the *Code of Practice* and the *Acts of the Legislature*, since the great repealing act of 1828..... *ib.*

3. A partition will neither be confirmed or annulled without all the parties to it being before the court..... *Lange et als. vs. Richoux et als.* 560

PARTNERSHIP.

1. Where a partnership, as to a single transaction, exists between two commercial firms, in an action by one firm for a settlement as to that transaction, it is not necessary to make all the members of the other firm defendants; especially where some of them do not reside within the jurisdiction of the court..... *Zacharie vs. Blandin.* 193

2. In such a copartnership the actual amount only which one of the firms may have paid on the merchandise owned in partnership, for duties

in foreign port, will be allowed to the firm paying it; and the court will not inquire whether that amount was expended in bribing the custom house officers of the port where the duties were paid..... *ib.*

3. A common interest in personal property, to be sold on joint account, constitutes a commercial partnership for the particular adventure; and any act fairly and honestly done, by one member of such partnership, is binding on the other..... *Hagan et als. vs. Fowler.* 311

4. A partner is a competent witness for his co-partner in suit for the recovery of the price of work which was done before the partnership was formed, and when he has no interest in the result of the suit.

Kellar vs. Banks, 527

5. The objection to a partner as a witness for his co-partner in a matter which took place before the existence of the partnership, goes to his credibility and not to his competency..... *ib.*

1. After the dissolution of a commercial firm, a partner cannot bind the co-partners by endorsement..... *Nott & Co. vs. Downing et als.* 680

6. Public notice of the dissolution of a partnership is good as to strangers, but not in relation to customers or others previously dealing with the firm; they are entitled to particular notice..... *ib.*

7. When public notice was given of the dissolution of a partnership and the endorsement of the name of the firm, appeared to be made afterwards on the note in suit which was purchased through the agency of a broker; held that the presumption of notice to the plaintiff is in favor of the defendant, and that the former was bound to show that he came within the exception, by being a customer entitled to particular notice. *ib.*

8. Before notice of the dissolution of a partnership to the holder of the partnership endorsement, notice of protest to a member of the firm is notice to all partners..... *Nott & Co. vs. Downing et als.* 684

9. In a suit for the liquidation and settlement of partnership transactions and accounts, all the partners of a firm must be made parties either as plaintiffs or defendants.

Lincoln Fearing & Co. vs. Executors of Russell Ball. 685

10. And where all the partners of several firms are prayed to be made parties to a suit for the liquidation and payment of the partnership concerns, and some of them reside out of the state and no representative is appointed, those who do appear may dismiss the suit for want of all the parties before the court..... *ib.*

11. Where a third person stipulates with a commercial firm, to advance a certain sum in cash or by endorsement for its support and credit, on which he is to be allowed ten per cent. interest per annum, and one third of the profits for a term of years, at the end of which this sum is to be re-imbursed, he will not be considered as a partner, but as having made a loan to the firm..... *Fletcher vs. Millaudon.* 697

PAYMENT.

1. In such an action, where part of a claim was barred by prescription, and there was evidence of a partial payment made upon the claim; held the amount paid must be imputed upon that part of the claim which is prescribed..... *Salnave vs. M^cDonough's executors.* 357
2. Payment is a peremptory exception going to extinguish the action, and must be pleaded..... *Glissons vs. Faurie et al.* 455

PENALTY.—See *Contract.*

PETITION-

1. Where the petition claims section No. 27, and the evidence shows that the land occupied by the defendant, is No. 28, the plaintiff will be precluded under the pleadings, from showing title to No. 28, and a judgment of nonsuit entered..... *Hall vs. Marshall.* 49
2. The circumstance of the defendant setting up title to sections 27 and 28, in his answer, will not authorise testimony to prove title to land not claimed in the petition..... : *ib.*
3. In an action on an obligation to deliver a certain quantity of cotton, where the plaintiff in an amended petition, alleged a promise made after the obligation had fallen due, to pay the amount in money; held proof of putting the defendant *in mora* is unnecessary, and that plaintiff was entitled to recover on proof of the subsequent promise as alleged.
Row vs. Richardson et al. 78
4. If advantage of the want of an allegation in the plaintiff's petition of putting the defendant in delay, be not taken by way of exception, proof of the putting in delay is admissible on the trial, and it is too late for the defendant to oppose its introduction..... *Harrison vs. Faulk.* 80
5. In an action of trespass for damages to the plaintiff's land, in which the petition alleges ownership and possession, and contains a prayer for general relief, the jury are excluded from an examination of the plaintiff's title..... *Petayvin vs. Winter.* 553

PLEADINGS.

- 1- When a suit was brought on a bill of exchange, and the defendant and drawer was not charged in the petition, upon his promise to pay after presentment of the bill to and refusal of payment by the drawee; and where eighteen months before the trial the defendant was apprised that he would be charged on that ground, by a deposition which was taken: held that evidence of such promise was admissible, although objected to on the trial..... *Ives vs. Eastin.* 13
2. A general allegation of a party being indebted in a gross sum, without any specification of the time, place or manner, in which the claim accrued, is too vague, to authorise the admission of proof in support of it.
Pagoud vs. Guice, administer, &c. 75

3. Although a party is precluded from attacking a judgment on the ground of fraud or nullity, after the lapse of one year, yet where the petition sets up payments and matters arising since the judgment complained of, they will be inquired into..... *Stafford vs. Smith.* 91

4. A receipt of a payment given since the institution of suit, and not claimed in an amended petition, will not, if objected to, be admitted in evidence, to prove the allegation of payment made in the petition, praying to enjoin further proceedings in an execution on other grounds *ib.*

5. When a general denial is pleaded to an action against the defendant as the drawer of a promissory note annexed, and made part of the petition, any variation between the name of the drawer as signed to the note and the defendant's name as described in the petition may be reconciled by parol testimony..... *Anselm vs. Braud.* 140

6. In action for work and labor performed under a contract, the plaintiff reciting in his petition an order or draft not negotiable, drawn in his favor by the defendant on a third person, and the defendant denying due diligence in the presentation of the draft, and claiming a discharge on that ground; held that the draft was not to be considered as a commercial bill of exchange, but was merely an indication of a settlement between the parties, showing the amount really due on the contract, and for this purpose it was admissible in evidence. *Benson et al. vs. Allison.* 304

7. Where a register of baptism proves that child was christened by the name of "Francisco Antonio," and a register of burials attests the interment of a person named "Francisco," and no question as to the identity was raised in the inferior court: *It was held* that the person whose death was attempted to be proved, must be considered the one whose death, according to the pleadings it was important to establish.

Celis et al. vs. Oriol et al. 403

POSSESSOR.

1. *It seems* that the article 2290 of the *Louisiana Code*, applies to cases in which the possessor was from the first a wrong doer and an usurper, acting with a knowledge of his want of faith. It cannot be said that the purchaser at the marshal's sale participated with the latter in the original trespass, by seizing and selling property without authority.

Joyce vs. Poydras de la Lande. 277

2. The possessor who was originally in good faith, is not liable for the destruction of the thing without his fraud or fault. *ib.*

3. Such a possessor is responsible for the fruits and revenues of the thing from the time he receives it until the time of its destruction. *ib.*

PRACTICE.

1. If an absolute judgment be rendered when the petition prays only for a conditional one, it is good ground for reversal. . *Sprigg vs. Beaman.* 59

2. No amendment by the judge *a quo*, of a judgment, can be made after the judgment has been signed, nor before, except for the causes enumerated in the 547th article of the *Code of Practice*.

Flint, syndic, etc. vs. Cuny et al. 67

3. When the judge *a quo* amends a final judgment after signing it, and appeal be taken from that amended judgment, the Supreme Court is not authorised to examine the first judgment..... *ib.*

4. If the advantage of the want of an allegation in the plaintiff's petition of putting the defendant in delay be not taken by way of exception, proof of putting in delay is admissible on the trial, and it is too late for the defendant to oppose its introduction..... *Harrison vs. Faulk.* 80

5. The request of one of the parties can alone authorise the testimony to be taken in writing by the clerk..... *Bowman vs. Jones.* 124

6. If the parties disagree as to the statement of facts, where the testimony has been taken in writing by the clerk, at the request of one of the parties, the judge is bound to make a statement of facts, and he has no right to avoid the obligation which the law imposes on him, by directing, *ex officio*, the testimony to be taken in writing by the clerk..... *ib.*

7. It is not sufficient to object generally, that the evidence is not the best; it must be shown, either from the nature of the fact to be proved, or otherwise that there is better evidence behind in the power of the party.

Duplessis vs. Kenedy et als. 231

8. When the judgment of the inferior court was not given on the question of fact, contested by the pleadings, and this is not complained of by the parties, the Supreme Court will not examine the correctness of the decision of the judge *a quo*, rejecting the depositions of a witness..... *ib.*

9. In a redhibitory action where the plaintiff in his petition, in order to prove the warranty of the slave, relies on a sale passed on a particular day, and identifies it by referring to it as annexed to an answer in a particular case in the same court: *held* that by the introduction in evidence of the act of sale, the defendant could not complain of surprise, although by the petition he alleges the payment to have been made by an endorsed note, and the act of sale shows it to have been made in cash.

Compton vs. Woolfolk. 273

10. In such a case the judgment rendered could be pleaded in bar to a subsequent action for the same cause..... *ib.*

11. The Supreme Court cannot give judgment against a warrantor cited in the cause, who has not answered, and against whom judgment by default has not been taken..... *Conway vs. Bordier et al.* 346

12. The validity of a judgment not reversed or appealed from, cannot be collaterally examined by either of the parties.

Psyche vs. Paradol et al. Durel appellant. 366

13. After the argument has commenced, new evidence cannot be introduced, except by consent of parties; but cases may occur in which the court might allow it under particular circumstances, and in the exercise of a sound discretion..... *ib.*

14. Where it was clear from the testimony of the case that a road was not made in conformity to law; but it had been examined and received by the persons duly authorized for that purpose; it was held that its original structure could not be inquired into.

Orleans Navigation Company vs. Allard et als. 485

15. In an action of trespass for damages to the plaintiff's land, in which the petition alleges ownership and possession, and contains a prayer for general relief, the jury are excluded from an examination of the plaintiff's title..... *Peytavin vs. Winter.* 553

16. Where in an action of trespass the jury pronounces on the plaintiff's title, this part of the verdict may be disregarded and judgment rendered on the claim for damages..... *ib.*

17. And where all the partners of several firms are prayed to be made parties to a suit for the liquidation and payment of the partnership concerns, and some of them reside out of the state and no representative is appointed, those who do appear may dismiss the suit for want of all the parties before the court.

Lincoln Fearing & Co. vs. Executors of Russell Ball. 685

18. It is the duty of the plaintiff to bring all the defendants before the court, by provoking the appointment of a curator *ad hoc* to those who reside out of the state..... *ib.*

19. The proceedings of the creditors of the drawer of a note, at which the endorser attended in relation to his endorsement, are not admissible in evidence by the bank in a suit by the holder of the note against it, for failing to give notice to the endorser by which he was released, to show he has been indemnified, especially when this matter is not pleaded, and because it is between persons not parties to the present suit.

Miranda vs. City Bank of New-Orleans. 740

20. Where the defendant pleads a general denial, and that he was not party to a suit by which the endorser was released for want of notice, he cannot offer evidence, to show the endorser has been secured against his endorsement..... *ib.*

PRESCRIPTION.

1. The prescription of one year applies to an action instituted to correct a former judgment, which it is alleged is erroneous, and some of the items composing it fraudulently charged; and if such an action be brought more than a year after the judgment, proof must be given that the fraud has been discovered within a year..... *Stafford vs. Smith.* 91

2. The prescription of four years relating to actions of minors against their tutors, is only applicable to accounts rendered by tutors. It relates to acts of a tutor, such as he may do in pursuance of his official power or authority, and such as would be ratified when legally done. The sale of property made as belonging to the seller, is not an act of this kind.

Commagere vs. Gally et al. 161

3 In an action for the balance due on account, the prescription of three years, for the hire of movables or immovables, is applicable.

Salnave vs. McDonough's Executor. 357

4. In such an action, where part of a claim was barred by prescription, and there was evidence of a partial payment made upon the claim: *held* the amount paid must be imputed upon that part of the claim which is prescribed..... *ib.*

5. The clause of the article 3499 of the *Louisiana Code*, which provides that actions of workmen, laborers, and servants for the payment of their wages, shall be prescribed in one year, does not apply to an action for work done under a specific contract or by the job.

Morrison vs. Leeds. 591

6. The prescription under the Spanish law, of debts on simple contracts resulting from chirographory or private instruments of writing is ten years..... *Goddard's heirs vs. Urquhart.* 659

7. The *Civil Code* of 1808, article 65, page 486 which provides that *all actions, &c.* are prescribed after thirty years, does not repeal the previous law which prescribes personal actions, debts on simple contracts, &c. after a lapse of ten years..... *ib.*

8. Under the *Louisiana Code* the prescription of personal actions and debts evidenced by chirographory instruments, is twenty years against persons residing out of the state..... *ib.*

9. Where the law is changed after prescription begins to run, the time elapsed under the law preceding the alteration is to be computed according to that law, and that which follows is to be reckoned according to the new law; and the time acquired under the old law is to be added to that acquired under the new law, in the proportion that each time bears to the term required by the old and new laws..... *ib.*

10. So in a personal action in which the prescription under the Spanish law is ten years, and nine years and seven months having expired, and only five months wanting at the promulgation of the *Louisiana Code* in 1825, which changed the prescription of personal actions as running against absentees to twenty years: *held* that ten months is required under the new law to complete the prescription..... *ib.*

PRESUMPTION.

1. On a question as to a debt claimed by the curator against the estate which he administers, founded on a receipt of the intestate given to a

third party for an amount equal to that claimed for the curator's account: held that the decision of the judge of the domicile of the parties, who was acquainted with them, their character, circumstances, &c., must have great weight..... *Denaule vs. Nunez.* 27

2. The lapse of a number of years though less than is sufficient for prescription, may afford a presumption of the payment of the debt, which if supported by others may amount to full proof..... *ib.*

3. Cotton in the possession of a certain person, shipped by him, and marked with the initials of his name, must be presumed to be his property. *Robinson et al. vs. Taylor et als* 393

4. The presumption created by the 2568th article of the *Louisiana Code*, regards vices of body solely..... *Lewis' Executor vs. Casenave.* 437

PRINCIPAL AND AGENT.

1. The agent, like the principal, may buy from any person not prohibited by law, but neither can buy from himself..... *Beal vs. McKiernan.* 407

2. A directs B to buy and ship cotton; B has cotton of his own, and determines to ship it. This creates no agreement, obligation, contract, or sale..... *ib.*

3. If the City Treasurer under a resolution of the city council employs a book-keeper, and puts it in his power to withdraw money from the treasury without the warrant of the Mayor, and to disguise his peculations by false entries and fraudulent accounts, instead of being a mere book-keeper, he becomes the confidential agent of the Treasurer who is liable for his mis-conduct..... *Mayor et als. vs. Blache et als,* 500

4. When an agent has charge of a vessel of his principal with a general authority to procure a cargo of goods suitable for a particular market, and draws and negotiates a bill of exchange to raise funds for this object, the principal will be bound to pay it, although the agent had no special power to this effect..... *Perrotin vs. Cucullu.* 587

5. Even without a specific power the agent can bind his principal by drawing bills and signing notes, when it is necessary to raise funds to carry into effect the main object of the agency..... *ib.*

6. Where a mercantile firm is part owner of a steamboat and acts as the agent of a co-proprietor at a distance to insure his interest therein, and afterwards discontinues such insurance without any instructions from him, and the boat is lost, the firm is liable for the amount of such interest uninsured..... *Berthoud vs. Gordon, Forstall & Co.* 579

7. And the circumstance that the firm rendered an account current to the co-proprietor before the loss of the boat in which the charge of the premium for insurance is omitted and no objection made, will not be considered as notice of a discontinuance of the agency to insure so as to excuse the party from his liability..... *ib.*



8. A bank or other agent, undertaking to collect a note or bill endorsed is bound to use the same diligence, in giving notice of protest and demand of payment of the drawer to the endorser as the holder, and is liable to the holder on failure.... *Miranda vs. City Bank of New-Orleans.* 740

9. The bank is responsible for the acts of the notary, in not giving due notice of protest to the endorser; and the *onus* rests upon it as agent, to show that no damage resulted from such neglect, in order to be relieved from its liability..... *ib.*

10. Where a bank or agent receives a note or bill for collection, and fails to give notice, and on suit being brought against the endorser, he is exonerated for want of notice of protest, the bank cannot excuse itself on the ground that it was not made a party to the suit, unless it can show that sufficient legal notice was given to the endorser..... *ib.*

PRISON BOUNDS.

1. Where a debtor is imprisoned on a judgment and execution exclusively in the name of the plaintiff, although others may have an interest therein; and after having given bond for the prison limits, the plaintiff in execution gives him a written "*consent as far as he is interested,*" to "absent himself for ten days," of which the debtor avails himself and leaves the prison limits without consulting the other persons interested, the surety in the prison bond is thereby discharged..... *Elkins vs. Zacharie* 646

2. The plaintiff in execution for whose benefit the prison bond is taken, is the only person who can control its conditions, and his consent that the debtor be absent only for ten days, forever discharges the surety.... *ib.*

PRIVILEGE.

1. The consignee has no privilege on a steamboat for monies which he has advanced on the boat..... *Zacharie et al. vs. O'Beirne et al.* 398

PROMISE.

1. A promise by the drawer to pay a bill of exchange after he was verbally notified of the drawee's refusal to pay it, is a waiver of his right to protest and notice in the usual form..... *Ives vs. Eastin.* 13

2. Where a suit was brought on a bill of exchange, and the defendant and drawer was not charged in the petition, upon his promise to pay after presentment of the bill to and refusal of payment by the drawee; and where eighteen months before the trial, the defendant was apprised that he would be charged on that ground, by a deposition which was taken: *held* that evidence of such promise was admissible, although objected to on the trial..... *ib.*

PROMISSORY NOTES—See *Bills of Exchange, &c.*

PURCHASER—See *Vendor and Vendee.*

RECUSATION.

1. The act of 1824, relating to the trial of causes in which the judges are recused, impliedly repeals the 30th section of the act of 1813, which directed the transfer of a cause which the district judge was incapacitated to try, to the court of a neighboring district. . . . *Jarreau vs. Choppin et al.* 130

2. The law of 1822, as to the trial of causes, cannot be resorted to, to prevent a delay of justice, in those cases to which the act of 1824 is inapplicable. . . . *ib.*

3. The judge before whom the case originated, and he whom the law calls in his place, being both incapacitated from acting, is a *cassus omissus*, and is remediable by the legislature only. . . . *ib.*

REGISTER OF CONVEYANCES.

1. The 5th section of the act creating the office of register of conveyances, requiring all acts of transfer of immovable property and slaves, whether passed before a notary or otherwise, to be registered, or to have no effect against third persons but from the day of registry, does not apply to purchasers *without notice*; and operates in favor of such creditors of the vendor as have a *recorded* judgment, or an attachment *levied* before registry. . . . *Syndic of M' Manus vs. Jewett.* 530

2. The registry of an act of sale in the office of the register of conveyances, before any proceedings are had against the purchaser, or notice to him of the claims of the creditors of the vendors, renders the sale valid, although not made until after a sequestration issues against the property. *ib.*

SALE.

1. A duly recorded sale of a tract of land, by a description applicable only to another tract, conveys *per se* no notice to a subsequent *bona fide* purchaser. . . . *Robeson vs. Robert.* 1

2. Although between the parties, the error in such a sale might be corrected, it can be regarded with respect to third persons, in no other light than a sale of other property. . . . *ib.*

3. Where a wife sells land belonging to her paraphernal estate, and in the notarial act of sale, acknowledges the receipt of the money, she cannot afterwards deny that she received it although she may waive the *actual* receipt. . . . *Foster vs. Her Husband.* 22

4. A vendor, having acknowledged the receipt of the price, may allege that he never touched it, but that it passed *eo instanti* into the hands of a third person, for his use and benefit. . . . *ib.*

5. In such a sale the wife may show that in pursuance of an agreement between herself and her husband, the money was actually paid to her husband, or actually passed through his hands in consequence of a transfer of the land by her vendee, and a subsequent sale. . . . *ib.*

6. If the sale of paraphernal property be made on a credit, the wife's right of mortgage attaches only from the date of the receipt of the money, and for the amount received..... *ib.*

7. The right acquired by each of two purchasers of the same tract of land from the same vendor, the title of either of whom requires for its validity as to third persons, only a due registry before the other, it is a subject of sale or legacy..... *Brown vs. Frantum.* 30

8. A and B verbally agreed that one might sell any part of the other's land, and the other was bound to approve the location. A had sold a certain quantity of B's land, and it was held that B might bequeath the same quantity of A's land..... *ib.*

9. A verbal agreement for land or slaves is not null and void; its defect relates solely to the proof; and if one of the parties acknowledge the agreement, or permits parol evidence of it to be given without opposition, the agreement will be carried into effect..... *ib.*

10. Every conveyance of property is null and void which the creditor takes from his debtor, knowing him to be in insolvent circumstances, and by which the debt is secured and advantage gained over other creditors. *Ingham et als. vs. Thomas.* 82

11. A conveyance of property is null when made to a third person by the insolvent's vendor, in consequence of a payment theretofore made by the insolvent to the vendor. The syndic alone is entitled to recover the property which the insolvent has conveyed in fraud of the rights of his creditors..... *ib.*

12. Where a slave is adjudicated at auction on a credit, and the vendee refuses to comply with the terms of sale; in the action brought against him the plaintiff should claim a compliance with these conditions or immediate payment; but in such a case, if the plaintiff demands an absolute judgment for immediate payment, the prayer for general relief will enable the Supreme Court to examine the case on its merits.

Gottschalk vs. De La Rosa. 219

13. In an action to rescind the sale of a slave, on account of his running away, proof that he ran away three times before the sale, without proof of the period the slave was absent at either time, is sufficient to support the claim.

Hiligsberg vs. New-Orleans Canal and Banking Co. et al. 228

14. A sale of mortgaged property by the sheriff under execution, does not extinguish the legal mortgage; *a fortiori*, the levying of an attachment on it cannot.

P. Blanchard's widow et als. vs. F. Blanchard et al: the State intervenor. 295

15. The sale by the executor of property bequeathed as a special legacy, is wholly irregular and void.

Psyche vs. Paradol et al. Durel, appellant. 366

16. The sale of property bequeathed, made by a universal legatee, is liable to be attacked, though the sale was in good faith, if a reduction of the legacy is afterwards decreed..... *Lowery vs. Kline*. 380

17. Where the vendor sells property at public auction *without title* to even a small part of it, the vendee to whom the adjudication is made, cannot be required to complete the sale and accept security.
Pontchartrain Rail Road Company vs. Durel. 481

18. The purchaser at public auction may object to the nullity of the sale to his vendor when it clearly appears that he has sold the thing of another..... *ib.*

19. In acts of sale and conveyance of immovable property, the sale is not complete until all the parties sign the act; and until *all* have signed, those that first signed may recede..... *Syndic of McManus vs. Jewett*. 530

20. But in a contract of sale signed by the vendor and vendee, in which the price and terms of payment are settled, the stipulation that a third person named in the act, will release a certain mortgage, is a stipulation in favor of the purchaser, is collateral to the contract; and the sale does not depend on that condition, and is valid without the signature of such third person..... *ib.*

21. A third person named in an act of sale, who stipulates therein to release a mortgage on the property sold, may be called as a witness by the vendee to prove that he had released the mortgage as stipulated, although he never signed the act containing this stipulation..... *ib.*

22. A sale made to one *not a creditor*, by an insolvent or absconding debtor, even within the three months preceding his failure, is not presumed to be fraudulent; and in an action to annul it, the burthen of proof is on the party attacking the contract..... *ib.*

23. A sale at auction is complete by the adjudication, but the law requires an act of sale or written evidence of the contract, and the purchaser has a right to require such a conveyance as will truly show what he bought and the conditions of sale.... *Canal Bank et als. vs. Copeland*. 543

24. Where a lot of land is sold in reference to a plan on which it is designated, the plan is regarded as forming part of the description of the land sold..... *ib.*

25. So where land is designated on a plan, which of itself refers to titles in the surveyor's office that will enable the purchaser to run the lines, it is a sufficient description to render the sale binding on him,.... *ib.*

26. A sale at auction is not null because the written instructions of the vendors to the auctioneer are not produced on the trial..... *ib.*

SALE OF MINOR'S PROPERTY.

1. The auctioneer's acceptance of the last bid, on the adjudication of the property of a minor, is the acceptance and sale of the tutor, and if the person acting in that capacity has not given security, there is no legal acceptance of the bid.....*Cavelier, f. w. c. vs. Germain*, 215

2. The subsequent ratification of a sale made under such circumstances by a family meeting, on the application of the purchaser, might have rendered the adjudication valid, but such a ratification is of no avail when obtained on behalf of the minor..... *ib.*

SEIZURE AND SALE.

1. The same *delays and formalities* must be observed in executing writs of seizure and sale against mortgaged property, as are required when property is seized under a writ of *fiери facias*. *Grant and Olden vs. Walden* 623

2. So in a sale of immovable property under a writ of seizure and sale, issuing on a judgment against third possessors of mortgaged property three days notice is required to be given after seizure, and before advertising; otherwise the sale is void and transfers no right in the property to the purchaser..... *ib.*

SEQUESTRATION.

1. Grounds of suspicion, merely, and those extremely light, do not authorise resort to so severe a mode of proceeding as a sequestration, nor ought they to have much influence in varying the standard by which damages should be awarded.....*Stetson et al. vs. Le Blance et al.* 260

2. A party against whose property a writ of sequestration is wrongfully sued out, ought to be placed as nearly as possible, in the situation in which he would have been had the writ not issued. If the party suing out the writ, fail to show not merely a real cause of action, but a ground of suspicion, which would justify a man in the sober pursuit of his rights, uninfluenced by momentary pique, to resort to a remedy intended only for extreme cases, he will subject himself to pay damages according to a liberal standard, though not vindictive..... *ib.*

3. A sequestration is a judicial deposit, and is essentially a conservatory act, which does not divest the title of the owner, and gives the creditor no greater right than he had before....*Syudic of McManus vs. Jewett*. 530

SHERIFF.

1. Sheriffs, marshals and constables are directly responsible so far as their negligence or want of skill, in the execution of the duties of their offices, cause a direct injury, but not for losses remotely consequential and such as grow out of a failure to gain or make profit.

Lambeth vs. The Mayor et als. 731

STATEMENT OF FACTS.

1. Where the record contains no statement of facts, and the certificate of the clerk shows that the testimony taken in open court was not reduced to writing, the case cannot be examined on its merits in the Supreme Court..... *Thomasson vs. Baum.* 193
2. The request of one of the parties can alone authorise the testimony to be taken in writing by the clerk..... *Bozman vs. Jones.* 124
3. If the parties disagree as to a statement of facts, where the testimony has not been taken in writing by the clerk, at the request of one of the parties, the judge is bound to make a statement of facts, and he has no right to avoid the obligation which the law imposes on him, by directing *ex officio*, the testimony to be taken in writing by the clerk..... *ib.*

STIPULATION.

1. So where A stipulates with B to pay C a debt owing to the latter by B, according to the doctrine of *stipulation pour autrui*, A becomes C's debtor..... *Baldwin vs. Thompson et als.* 474

SUBROGATION.

1. A surety who pays and is subrogated to the rights of the creditor against the principal debtor may legally issue execution in the name of the judgment creditor..... *Sprigg vs. Beaman.* 59
2. In the assignment of a judgment the legal and the express subrogation are of equal extent, and every right which the creditor possessed, passes by the act of payment to him by whom that payment is made. *ib.*
3. Where a person pays a debt for another which he may be legally bound to pay, or have an interest in paying, he is thereby subrogated to all the rights of the creditor against the person for whom he has paid.
Baldwin vs. Thompson et. als. 474
4. Where A stipulates with B to pay certain notes given by the latter to C, which are secured by mortgage, and A fails to make payment: *held*, on B's taking up his own notes, he is thereby subrogated to all C's right of mortgage against the property affected, even in the hands of a third possessor..... *ib.*
5. The act of subrogation must be evidenced by an authentic document; i. e. the payment made by the original promisor in the notes, must be shown by a notarial act, to authorise an order of seizure and sale thereon..... *ib.*

SUBSTITUTION.

1. The principles relating to a substitution, apply equally whether the substitution results from the terms used in creating the donation, or un-

der the disguise of a stipulated return; and if their lurks a real substitution in the condition of return as expressed by the parties, its absolute nullity must be declared..... *Duplessis vs. Kennedy et als.* 231

2. If while the donor stipulates a return to himself, he stipulates it in favor of another at the same time, and yet not in terms importing essentially a substitution, the stipulation of return to himself may subsist, and that part only be declared null, which contravenes the prohibition of the Code..... *ib.*

SUCCESSION.

1. The heir is liable only for his virile share of his ancestor's debt, though an administrator has been appointed, and the acceptance of the succession has been unconditional..... *Mudd vs. Stille's heirs.* 17

2. In an action against the administrator of a succession, founded on a claim for the interest stipulated in the intestate's obligation, legal interest will be added, as upon other claims against the estate..... *ib.*

3. The 984th article of the *Code of Practice*, which requires all unliquidated claims against an estate to be first presented to the administrator before suit is brought, does not require proof or evidence to be produced to him..... *Hamblin vs. Hook, Administratrix.* 73

4. Article 327, of the *Louisiana Code*, does not relate to a succession of which a tutor has already the administration by virtue of his tutorship. It refers to estates which may descend to his wards during their minority. *Erwin et als. vs. Orillion.* 205

5. The tutor can under authority of general administration, collect and sue for, if necessary to such collection, debts due to the succession..... *ib.*

6. When an estate is accepted with the benefit of inventory, and some of the heirs are of full age, while others are minors, it should be left to the administration of the tutor until partition. In suits to recover debts due to the succession, the heirs of full age and the tutor of the minor heirs should concur..... *ib.*

7. The article 1034 to 1040 seem to require the appointment of an administrator in every case where a succession is accepted with benefit of inventory..... *Poultney's Minors vs. Barrett et al.* 493

8. Where a succession is accepted with the benefit of inventory, and some of the heirs are of full age and others are minors, it should be left to the administration of the tutor of the minors until partition..... *ib.*

SURETY.

1. A surety who pays and is subrogated to the rights of the creditor against the principal debtor may legally issue execution in the name of the judgment creditor..... *Sprigg vs. Beaman.* 95

2. The act approved in March 1827, absolutely prohibits any resort to the property of the sureties of the sheriff, until all that of their principal in the parish has been exhausted... *Blanchard et al. vs. State of Louisiana.* 290

3. The sureties on a curator's bond, are not bound in warranty to purchasers of property belonging to the succession administered by him.

Longpre vs. White. 388

4. The responsibilities of sureties in bonds, given to secure the faithful discharge by curators of their duties, renders them liable for misconduct, only to the heirs and creditors of the deceased..... *ib.*

5. The surety is discharged when by the act of the creditor the subrogation of his rights, privileges and mortgages, can no longer be operated in favor of the surety..... *Mayor et als. vs. Blache et als.* 500

6. Where the corporation of New-Orleans released a mortgage in their favor on certain property of the city Treasurer, without the consent of one of his sureties: *held*, that the surety is discharged thereby..... *ib.*

7. But where a co-surety is present and consents to the release of a mortgage on the property of the principal debtor, and that it be sold and applied to the payment of a deficit for which he is bound in a surety bond, he is not thereby released, although his co-surety not consenting and bound *in solido* with him, is released..... *ib.*

8. The laws of the United States requiring the accounting officers to examine and settle the accounts of their debtors at stated periods, is directory and constitutes no part of the contract with the sureties; and a failure to call them to account does not discharge the sureties..... *ib.*

9. When the city Treasurer is re-elected his new bond is for a new contract, and the sureties who sign it cannot avail themselves of a neglect of duty to call the Treasurer to account for defalcations of the past year..... *ib.*

10. Where an obligation is valid as to the principal obligor, the sureties cannot avoid responsibility incurred under it without showing they were deceived and induced to sign it by devices intentionally practised on them..... *ib.*

11. Where notes are put into the hands of a surety to indemnify him against loss on payment of a surety debt, if it is shown that the obligors in said notes were insolvent or became so very soon after, the failure to collect or to pursue them is not imputable to the holder.

Thomas et als. vs. Breedlove et als. 573

12. In cases where a fund has been created or assigned to indemnify the surety the original creditor may in equity cause himself to be paid out of this fund which is the nature of a trust for his benefit.

King vs. Harman's Heirs. 607

13. A bond creditor in chancery has the benefit of all counter bonds or collateral securities given by the principal to the surety..... *ib.*

14. So where A gave his bond of indemnity to B to secure him against his guarantee for C to D, on the failure of C, and B his surety becoming liable on his guarantee to D, and assigning his indemnity bond from A to the creditors of D: *held*, that the latter can recover on it even before actual payment by B..... *ib.*

15. The plaintiff in execution for whose benefit the prison bond is taken is the only person who can control its conditions, and his consent that the debtor be absent only for ten days, forever discharges the surety.

Elkins vs. Zacharie. 646.

TENDER

1. A real tender cannot be made so as to stop interest, unless the legal formalities are pursued; thus, a tender to the plaintiff's attorney at law, is insufficient..... *Mudd vs. Stille's heirs.* 17

TESTAMENT.

1. A will cannot be annulled, or its validity inquired into without making those having an interest arising under it, parties to the suit.

Grubb's Heirs vs. Henderson. 51

2. The formalities required in a will are matters of strict law, and it is null if they are not complied with..... *Gaude vs. Baudoin.* 722

3. If a will under private signature be signed in the presence of three witnesses, and on the next day a supplement is made to the original, signed by the testator and five witnesses, the first proceeding will be laid out of view, and the last considered as legalizing the whole instrument..... *ib.*

4. A foreigner not naturalized, who is *residing* in the parish, has been some years in the United States, and has no other domicile in the state, is a competent witness to a will..... *ib.*

THIRD PARTY.

1. Although between the parties, the error in such a sale might be corrected, it can be regarded with respect to third persons, in no other light than a sale of other property..... *Robeson vs. Robert.* 1

2. The word "third persons" in the article 3315 of the *Louisiana Code*, include all who may be interested in the pecuniary standing or solvency of the person against whom mortgages exist, and consequently it includes creditors of every description who may have dealt with the mortgaging debtor, in good faith, whilst in ignorance of or before the existence of the right claimed by mortgage creditors.

Gilbert vs. His Creditors. 145

TITLE.

1. When two parties are applicants for the purchase of a tract of land from the United States, and the Register permits one of them to purchase,

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his title under such a permission will not be disturbed, although the evidence does not satisfactorily prove the decision between them to have been made by a comparison of the proof of their respective pretensions.

Primot vs. Thibodeaux. 10

TRANSFER.

1. The legal transferee has no greater interest than the voluntary one. The 651st article of the *Code of Practice*, does not change the rights, which under law third persons had to resist partial transfers of their debt.

Kelso vs. Beaman. 67

TUTOR.

1. The tutor can, under authority of general administration, collect and sue for if necessary to such collection, debts due to the succession.

Erwin et als. vs. Orillion. 205

2. Tutors, except those by nature, are bound by law to obtain confirmation of their appointment by the judge of probates; to take an oath faithfully to discharge their duties, and to give security. Until a tutor complies with these duties, he can do nothing binding and conclusive on the rights of minors whom he represents..... *Verret et al. vs. Aubert.* 351

3. But a tutor duly appointed, or one on whom the office devolves by operation of law, represents the minors under his charge in all civil suits or acts, and has the administration of their estates.

Poultney's Minors vs. Barrett et al. 493

4. The tutor can, under the authority of the general administration to collect and sue for debts, institute suit in behalf of the minors, for the recovery of a debt due the succession..... 5.

VENDOR AND VENDEE.

1. A and B verbally agreed that one might sell any part of the other's land and the other was bound to approve the location; A had sold a certain quantity of B's land, it was held that B might bequeath the same quantity of A's land..... *Brown vs. Frantum.* 39

2. A declaration that the vendee is acquainted with the title, means that he has a knowledge of the title under which his vendor acquired the property, but not that he knows the vendor has divested himself of that title. 5.

3. In an action by the vendor against the vendee of real estate, adjudicated at public auction, the plaintiff's request to the defendant that he would comply with the terms of the sale, and the defendant's refusal to do so, is insufficient to put the latter in default..... *Stewart vs. Paulding.* 151

4. The 1787th article of the *Civil Code*, has no relation to the opposition on the part of the vendee to carry into effect the adjudication to him of minor's property, ratified by a family meeting subsequently held, on the ground that the bond of the tutor was not given within two days after the adjudication..... *Cavelier f. so. c. vs. Germain.* 215

5. Persons interested in an estate, are in equity bound to refund to the vendee the price really received for property sold erroneously, as belonging to the estate, but they are not responsible for consequential damages or loss.....*Hurst vs. Hyde, Executor.* 449

6. The purchaser need not wait for eviction before he refuses to pay the price, or complete a sale which may subject him to the odium of a purchaser in bad faith.....*Pontchartrain Rail Road Company vs. Durel.* 481

7. It is of no avail that the vendor can give a good title to all but a very small proportion of the property sold. The buyer must have what he bought and every part of it..... *ib.*

8. Where the vendor sells property at public auction without title, to even a small part of it, the vendee to whom the adjudication is made cannot be required to complete the sale and accept security..... *ib.*

9. The purchaser of property at sheriff's or marshal's sales, is entitled to the sum which he really paid and which must be reimbursed in case of eviction; the consideration thereby having absolutely failed.

Lambeth vs. The Mayor et als. 731

10. Where a purchaser at a marshal's sale is afterwards evicted on the ground that the property was not legally sold, the only injury he sustains is the amount which he paid for the property..... *ib.*

11. Seizing creditors of property sold under execution, are responsible to the purchaser no further than for the re-imbursement of the purchase money..... *ib.*

12. The vendor necessarily warrants against his own acts, and even without a stipulation of warranty is liable for a restitution of the price, unless the purchaser was aware at the time of sale of the danger of eviction, and purchased at his peril.....*Canal Bank et als. vs. Copeland.* 543

VERDICT

1. A verdict not followed by a judgment has no force for any purpose.

Stetson et al. vs. Le Blanc et al. 266

2. Of all questions, there is perhaps none on which the verdict of a jury is entitled to more weight, than that which relates to the value of waste land in the parish.....*Minoue et al. vs. Thibodeaux's widow et al.* 327

3. A verdict made up from the evidence of the case, not manifestly wrong, will not be disturbed.....*Huset's heirs vs. Lefebvre et als.* 601

WITNESS.

1. An attorney interrogated as a witness in a case upon his *voir dire*, swore "that he had not stipulated any particular fee; but expected to be paid for his legal services, and that it was his habit, when he had not stipulated for his fee to charge less, should he fail in the cause than if he were to succeed, and that he would feel bound by his rule of conduct to ap-

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ply it in this case." It was held by the court that he was admissible as a witness for his client..... *Sprigg vs. Beaman*. 59

2. A debtor who is liable in warranty, if the plaintiff succeed against his vendee, has a direct and legal interest, which renders him incompetent to testify in the case..... *ib.*

3. The father-in-law is a competent witness to testify in behalf of his son-in-law..... *Hamblin vs. Hook, administratrix*. 70

4. A witness for plaintiff has no right to refresh his memory by reference to the plaintiff's books, where it does not appear the entries were made by the witness..... *Pargoud vs. Guice, administer, &c.* 75

5. A party to the suit, made a witness by an application to his conscience, cannot complain of being judged by such answers as he chooses to give..... *Robbins, syndic, etc. vs. Leverich et al.* 340

6. Where the question propounded to the defendant, was in substance, whether he received directly or indirectly, the transfer or assignment of a particular debt; the answer which negatives only the transaction directly between the insolvent and the defendant personally, is insufficient. *ib.*

7. A partner is a competent witness for his co-partner in a suit for the recovery of the price of work which was done before the partnership was formed, and when he has no interest in the result of the suit.

Kellar vs. Banks. 527

8. The objection to a partner as a witness for his co-partner in a matter which took place before the existence of the partnership goes to his credibility and not to his competency..... *ib.*

9. A third person named in an act of sale, who stipulates therein to release a mortgage on the property sold, may be called as a witness by the vendee to prove that he had released the mortgage as stipulated, although he never signed the act containing the stipulation.

Syndic of McManus vs. Jewett. 530

10. A foreigner not naturalized, who is residing in the parish, has been some years in the United States, and has no other domicile in the state, is a competent witness to a will..... *Gaude vs. Baudoin*. 722

WORKMEN.

1. The clause of the article 3499 of the *Louisiana Code*, which provides that actions of workmen, laborers and servants, for the payment of their wages, shall be prescribed in one year, does not apply to an action for work done under a specific contract or by the job.

Morrison vs. Leeds. 591

2. Where a person contracts with a workman to build several houses for a certain price payable at fixed periods, and discharges him before the completion of the edifices, and it is in proof the work was well executed, the latter will recover the full amount of his work and labor done as on a *quantum meruit*..... *Jouhanc vs. Daunoy*. 656